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PERIYASAMI v. STATE & ANOTHER APPEAL

SUPREME COURT, INDIA
(2014) 6 SUPREME COURT CASES 59
P SATHASIVAM CJ
RANJANA P DESAI J
B RANJAN GOGOI J
[CRIMINAL APPEALS NO: 1272 OF 2012 & 787 OF 2013†]
11 APRIL 2014

C ***EVIDENCE:*** *Terrorist and Disruptive Activities (Prevention) Act, 1987 – S. 15 – Retracted confession under – Manner of appreciation of – A retracted confession is not always worthless – Retraction can be the result of an afterthought, legal advice or pressure – Therefore, each case has to be judged by examining these aspects and whether the confession is voluntary and truthful and whether the retraction is an afterthought*

D ***EVIDENCE:*** *Terrorism and Organised Crime – Witnesses – Independent witness – Case under TADA – Absence of adequate independent witness – Available independent witnesses turning hostile – Manner of appreciation of evidence*

EVIDENCE: *Terrorist and Disruptive Activities (Prevention) Act, 1987 – Ss. 15, 3(3), 4(1), 3(2)(ii) and 5 – Retracted confession under s. 15, TADA corroborated by* E *other evidence – When can be relied on for conviction – A-1's case – Conviction confirmed based on his retracted confession which was sufficiently corroborated by other reliable and cogent evidence*

PW15 who was permitting stay of Dalits in his house (being a follower of F Ambedkar's ideas), was asked by A-2 that A-1 and 3 others would stay in his house – When accused persons were manufacturing bomb in his house, writing slogans in posters, and when A-1 asked PW15 to bring sulphur, PW 15 suspected their activities – On inquiry, PW15 was told that he would know about it when he reads the newspaper the next day – A-1 confessed G before PW37 (SP, CID) about his manufacturing bomb in PW15's house and how he and three of his associates planted bomb and destroyed a railway bridge – PW15 stated that after the blast he met A-1 who informed PW15 that they had destroyed the railway bridge and that if he discloses this to anyone all his family members would be killed – PW13 stated that posters H were seized from the place where blast took place – Evidence of PW32 (forensic expert) indicates that handwriting of A-1 matched with handwriting in posters found at bomb site – PW15 also corroborated the A-1's statement regarding manufacture of bomb in his house – Evidence of PWs 1 to 13 (railway employees) confirmed that the railway track was destroyed

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† From the Judgment and Order dated 27-6-2012 of the Principal Sessions Judge and Designated Judge under TADA (P) Act, Tiruchirapalli in Calendar Case No. 45 of 1995 in Crime No. 307 of 1992

Held, A-1's involvement in the crime is proved by his confessional statement which is sufficiently corroborated by reliable and cogent evidence – The trial court therefore, rightly convicted him for the offences under TADA, IPC and other statutes – Penal Code, 1860 – S. 120-B – Explosive Substances Act, 1908 – Ss. 3 and 5 – Railways Act, 1989 – S. 150(2)(b) – Government Grants, Largesse, Public Property and Premises – Prevention of Damage to Public Property Act, 1984, S. 3 r/w S. 4 – Evidence Act, 1872 – S. 45 – Handwriting expert – Testimony of – Reliance upon

EVIDENCE: *Terrorist and Disruptive Activities (Prevention) Act, 1987 – S. 15 – Main witness (PW15) turning hostile though his s. 164 CrPC statement substantially confirming to A-1's confession – Evidence of PW 15, whether reliable or should be discarded as tainted*

PW15's statement was not continuous and on several occasions he was not cross-examined at all – His recording was unduly prolonged probably because an effort was made to win him over – In court PW15 reiterated what he had stated in his s. 164 CrPC statement – PW 15 corroborated confession of A-1 regarding manufacture of bomb in his house by accused persons and that he had suspicion about their activities – Held, evidence of PW15 cannot be discarded as tainted – PW15 appears to be a victim of circumstances and was used by accused persons – Even if he was declared hostile, the evidence of hostile witness is not completely discarded – That part of his evidence can be relied on which is corroborated by other evidence – Criminal Trial – Witnesses – Hostile witness – Manner of appreciation of evidence – Criminal Procedure Code, 1973, S. 164

CRIMINAL LAW: *Terrorist and Disruptive Activities (Prevention) Act, 1987 – Ss. 15, 3(3) & 3(2)(ii) and 4(1) – Retracted confession under S. 15, TADA corroborated by other evidence – When can be relied on for conviction – A-2's case – Conviction of A-2 reversed to acquittal as case against him not being proved beyond reasonable doubt – A-2 only asking PW 15 for giving shelter and food to accused persons and not himself staying in PW 15's house (clear from evidence of PW 15 and confession of A-1) – A-1 (in his confessional statement, from which he retracted) not referring to A-2 – As per evidence of PW15 and confessional statement of A-1, it being clear that A-2 was not involved in any of the actions of manufacturing bombs, carrying them to target place and planting them or writing slogans – PW15's evidence that after blast, A-2 told him about persons who caused blast and threatened elimination of his family if PW15 disclosed it to anyone, not corroborated by any evidence on record – Held, the case against A-2 is not proved beyond reasonable doubt – Therefore, his conviction is set aside and bail bonds were discharged – For conviction of A-1, see Shortnote C – Penal Code, 1860 – S. 120-B – Government Grants, Largesse, Public Property and Premises – Prevention of Damage to Public Property Act, 1984, S. 3 r/w S. 4*

EVIDENCE: *Terrorist and Disruptive Activities (Prevention) Act, 1987 – S. 15 – Recording of confession under – Proper procedure (whether statement recorded was voluntary and truthful) – Whether was followed – PW40 (Inspector) producing A-*

1 before PW 37 (SP, CID) and giving written requisition for recording his confession under S. 15, TADA – PW 37 after satisfying himself that he was not threatened or induced to give confessional statement, recorded his confession and obtained his signatures on each page of his confession – Held, A-1's confession was recorded after following the correct procedure and A-1 was not forced or compelled to give his statement – His retraction was clearly an afterthought

Upholding the conviction and sentence of A-1 but setting aside the conviction and sentence of A-2, the Supreme Court

Held:

It is common knowledge that when the terrorists unleash a way of terror, no independent witnesses are ready to come forward and depose against them. In any case, the evidence on record is cogent and reliable and, therefore, non-examination of independent witnesses does not have any adverse impact on the prosecution case. PW14 (wife of PW15) and some formal witnesses turned hostile. This, however, has not affected the core of prosecution case which is established by reliable evidence. (para 15)

A confessional statement recorded under Section 15 of the TADA, if found to be voluntarily made and is truthful and properly recorded, can form the basis of conviction. Retraction does not always dilute or reduce or wipe out the evidentiary value of a confessional statement. Quite often retraction is an afterthought. It could be the result of legal advice or pressure exerted by those whose involvement may be likely to be disclosed or confirmed by the confessional statement of the accused. Therefore, in each case, the court will have to examine whether the confession was voluntary and true and whether the retraction was an afterthought. A retracted confessional statement is therefore not always worthless. A-1's confessional statement was recorded after following the correct procedure. That is it was voluntary and truthful, A-1 was not forced or compelled to give his statement and the retraction of the said statement is clearly an afterthought. Therefore, the retraction should be ignored. (paras 22 and 24)

State v. Nalini, (1999) 5 SCC 253 : 1999 SCC (Cri) 691
Kalawati v. State of H.P., AIR 1953 SC 131 : 1953 Cri LJ 668, relied on
Jameel Ahmed v. State of Rajasthan, (2003) 9 SCC 673 : 2003 SCC (Cri) 1853
Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 SCC 1
State of T.N. v. Kutty, (2001) 6 SCC 550 : 2001 SCC (Cri) 1177, affirmed

In any case, there is sufficient corroboration available to the confessional statement of A-1 from the other evidence on record. (paras 25, 26 and 16)

The evidence of a hostile witness need not be completely discarded. The prosecution can use that part of his evidence which is corroborated by other evidence on record. From 13-9-1996 when PW15 was first examined in the court till 25-9-1998, he supported the prosecution. When after five years he was recalled on 19-9-2001, he resiled from his previous statement only to some extent. On 28-9-2001, he confirmed some portion of his earlier

statement but resiled to a large extent from his earlier statement. It is obvious that the recording of his evidence was not continuous. There was huge gap of five years between recording of his examination and re-examination. It is also pertinent to note that on 13-9-1996, 3-11-1997, 5-2-1998 and 25-9-1998, when he narrated the sequence of events and explained the role of the accused, he was not cross-examined at all. It is clear from this that recording of his evidence was unduly prolonged, and in that period, an effort was made to win him over. These facts will have to be taken into consideration while considering the evidentiary value of his evidence. It would be safe to rely on that part of the evidence of this witness, which is corroborated by other evidence on record. (para 27)

Bhajju v. State of M.P., (2012) 4 SCC 327 : (2012) 2 SCC (Cri) 440, affirmed
Pulin Das v. State of Assam, (2008) 5 SCC 89 : (2008) 2 SCC (Cri) 520
Prakash Kumar v. State of Gujarat, (2007) 4 SCC 266 : (2007) 2 SCC (Cri) 285
Vijayan v. State of Kerala, (1999) 3 SCC 54 : 1999 SCC (Cri) 378, referred to

SS-D/53146/CR

Advocates who appeared in this case:

for the Appellant - M.S. Ganesh, Senior Advocate (S. Gowthaman, K. Paarivendhan, S. Sethu Mahendran and R. Ayyam Perumal, Advocates)

for the Respondent - Subramonium Prasad, Additional Advocate General (M. Yogesh Kanna, Rajeew Dalal and Ms Vanitha C. Giri, Advocates)

Chronological list of cases cited on page(s)

Yakub Abdul Razak Memon v. State of Maharashtra (2013) 13 SCC 1
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Jameel Ahmed v. State of Rajasthan (2003) 9 SCC 673 : 2003 SCC (Cri) 1853
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State v. Nalini (1999) 5 SCC 253 : 1999 SCC (Cri) 691
Vijayan v. State of Kerala (1999) 3 SCC 54 : 1999 SCC (Cri) 378
Kalawati v. State of H.P. AIR 1953 SC 131 : 1953 Cri LJ 668

JUDGMENT

Ranjana P Desai J:

[1] The present appeals filed under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) are directed against the judgment and order dated 27-6-2012 passed by the Principal Sessions Judge and Designated Judge under TADA, for Tiruchirapalli in Calendar Case No. 45 of 1995 in Crime No. 307 of 1992 of Vridhachalam Railway Police Station. The appellant in Criminal Appeal No. 787 of 2013 is Senthilkumar alias Kumar ("A-1 Senthilkumar", for convenience). The appellant in Criminal Appeal No. 1272 of 2012 is Periyasami ("A-2 Periyasami", for convenience).

[2] According to the prosecution, on 24-10-1992, PW10, Ramasamy was driving Quilon Express (Train No. 6105). When the train reached near Maruvathur Peria Odai Bridge No. 276, he noticed some object over the railway track. He immediately applied emergency brake and stopped the train. PW11, Rajendran Raja, who was the Assistant Driver stepped down from the train along with the Guard and proceeded to inspect the track. They saw some boulders placed on the track covered with green leaves. At that time, they heard a loud noise near the bridge situated at a distance of 1 km. In the meantime, PW2, Ganapathy, Station Master 3 of Sillakudi Station, received information that Quilon Express had started from Kallagam Station after crossing of Pearl City Express, but had not reached Palanganatham. He instructed PW1, Antonisamy, PW4, Hazi Salahudeen, PW6, Thangaraj and PW7, Ponnaian to find out the reason for the delay of the Quilon Express. They found at the place of occurrence the rails bent upwards and the gravel stones and the sleepers broken and dislocated. Under the bridge, they saw some papers containing slogans. They saw some slogans written on the bridge walls. Some boulders were also found over the railway track covered with green leaves. PW8, Raja Chidambaram, SEP at Kallagam Station also went in search of the train along the track and found the train on the northern side of Bridge No. 276. He found boulders placed on the track covered with green leaves. The sleepers were found broken and dislocated and rails found bent upwards.

[3] On information being received from the Control Room about the bomb blast on the railway line, PW29, Hyder Ali Khan, Sub-Inspector of Police, Railway, Vridhachalam rushed to the place of occurrence. He received complaint (Ext. P-1) dated 24-10-1992 from PW1 Antonisamy and registered a case being Crime No. 307 of 1992 against unknown persons under Section 150 of the Railways Act and under Sections 3 and 5 of the Explosives Act and Sections 120-B and 124 IPC. The printed version of the first information report (Ext. P-11) was forwarded to the Judicial Magistrate, No. V, Tiruchirappalli and a copy was forwarded to the Inspector of Police, Railways, Villupuram for necessary action. Investigation was started. It appears from the evidence of PW40, Pattabiraman, the Inspector of Police of "Q" Branch, CID, Tiruchirappalli that after he took over the investigation, he interrogated PW15, Sevi Periyasamy. He got the leads. Involvement of A-1 Senthilkumar, A-2 Periyasami and other accused was disclosed. A-1 Senthilkumar was arrested on 17-12-1993. On his search, five gelatin sticks concealed in his right-side waist, five electric detonators concealed in his left-side waist and two pen torch cells from his pocket were recovered. They were seized under mahazar (Ext. P-5). On 19-12-1993, the confessional statement of A-1 Senthilkumar was recorded by PW37, Ramanujam, Superintendent of Police, "Q" Branch, CID under Section 15 of TADA, after following the necessary procedure. A-2 Periyasami was arrested on 9-1-1994.

[4] Upon completion of investigation, PW 40 PI Pattabiraman filed a police report under Section 173 of the Code of Criminal Procedure (for short "CrPC") against A-1 Senthilkumar, A-2 Periyasami, absconding accused Rajaram alias Madhavan alleging that A-1 Senthilkumar, A-2 Periyasami along with absconding accused Rajaram alias Madhavan and deceased Lenin and Karalan alias Nagarajan are members of "Tamil Nadu Viduthalai Padai" and "Thamizhaga Makkal Viduthalai Padai", the main object of which was to strike terror in the people by planting bombs to cause derailment of trains and to cause damage to the Central and State Government properties by such acts and to secede Tamil Nadu from the Indian Union. It was alleged that A-1 Senthilkumar, A-2 Periyasami, along with the absconding accused Rajaram alias Madhavan and deceased Lenin and Karalan alias Nagarajan conspired together and A-2 Periyasami introduced witness Sevi Periyasamy to them at Duraimangalam and they manufactured explosive bombs and caused blast of the rails of Bridge No. 276 in between km 292/6 and 7 situated between Kallakudi Pazhanganatham and Kallagam Railway Stations on 24-10-1992 at 2.45 hours with intention to endanger the life of passengers of Quilon Express which usually crosses the bridge at or about the same time and the explosion damaged 20 wooden sleepers and rails to a length of 20 ft and portion of concrete structures. The disaster was averted because the engine driver stopped the train noticing the boulders on the rails. It was also alleged that on 17-12-1993 A-1 Senthilkumar was in unauthorised possession of detonators and gelatin sticks without any permit. The report alleged various charges under the TADA, the Explosive Substances Act, the Prevention of Damage to Public Property Act and the Railways Act against the accused.

[5] As accused Rajaram alias Madhavan was absconding, the case against him was split. Since it was reported that he had died, his case was disposed of as having abated.

[6] The trial court framed charge against A-1 Senthilkumar for the offences under Section 120-B IPC read with Section 3(3) and Section 4(1) of the TADA, Sections 3(2)(ii), 4(1) and 5 of the TADA, Sections 3 and 5 of the Explosive Substances Act, Section 150(2)(b) of the Railways Act and Section 3 read with Section 4 of the Prevention of Damage to Public Property Act. As against A-2 Periyasami the trial court framed charge under Section 120-B IPC read with Sections 3(3) and 4(1) of the TADA, Sections 3(3) and 4(1) of the TADA, Section 3 of the Explosive Substances Act and Section 3 read with Section 4 of the Prevention of Damage to Public Property Act.

[7] A-1 Senthilkumar and A-2 Periyasami pleaded not guilty to the charges. Two defence witnesses were examined to establish that the police threatened them and asked them to produce A-1 Senthilkumar thus suggesting that A-1 Senthilkumar was falsely implicated. The prosecution examined 41 witnesses.

[8] After perusing the evidence, the trial court convicted A-1 Senthilkumar under Section 120-B IPC read with Sections 3(3) and 4(1) of the TADA, Sections 3(2)(ii), 4(1) and 5 of the TADA, Sections 3 and 5 of the Explosive Substances Act, under Section 150(2)(b) of the Railways Act, 1989 and under Section 3 read with Section 4 of the Prevention of Damage to Public Property Act and sentenced him to undergo life imprisonment for the offence under Section 150(2)(b) of the Railways Act; rigorous imprisonment for a period of 5 years and to pay a fine of Rs 1000 and in default to undergo rigorous imprisonment for a further period of 6 months for the offence under Section 120-B IPC read with Sections 3(3) and 4(1) of the TADA; rigorous imprisonment for a period of 5 years and to pay a fine of Rs 1000 and in default to undergo rigorous imprisonment for a further period of 6 months for the offence under Section 3(2)(ii) of the TADA; rigorous imprisonment for a period of 5 years and to pay a fine of Rs 1000 and in default to undergo rigorous imprisonment for a further period of 6 months for the offence under Section 4(1) of the TADA; rigorous imprisonment for a period of 5 years and to pay a fine of Rs 1000 and in default to undergo rigorous imprisonment for a further period of 6 months for the offence under Section 5 of the TADA; rigorous imprisonment for a period of 10 years and to pay a fine of Rs 1000 and in default to undergo rigorous imprisonment for a further period of 6 months for the offence under Section 3 of the Explosive Substances Act; rigorous imprisonment for a period of 5 years and to pay a fine of Rs 1000 and in default to undergo rigorous imprisonment for a further period of 6 months for the offence under Section 4 of the Explosive Substances Act and rigorous imprisonment for a period of one year and to pay a fine of Rs 1000 and in default to undergo rigorous imprisonment for a further period of 2 months for the offence under Section 3 read with Section 4 of the Prevention of Damage to Public Property Act (total fine Rs 7000). Substantive sentences were to run concurrently.

[9] The trial court convicted A-2 Periyasami under Section 120-B IPC read with Sections 3(3) and 4(1) of the TADA, Sections 3(3) and 4(1) of the TADA and under Section 3 read with Section 4 of the Prevention of Damage to Public Property Act and sentenced him to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs 1000 and in default to undergo rigorous imprisonment for a further period of 6 months for the offence under Section 120-B IPC read with Sections 3(3) and 4(1) of the TADA; rigorous imprisonment for a period of 5 years and to pay a fine of Rs 1000 and in default to undergo rigorous imprisonment for a further period of 6 months for the offence under Section 3(3) of the TADA; rigorous imprisonment for a period of 5 years and to pay a fine of Rs 1000 and in default to undergo rigorous imprisonment for a further period of 6 months for the offence under Section 4(1) of the TADA; and rigorous imprisonment for a period of one year and to pay a fine of Rs 1000 and in default to undergo rigorous

imprisonment for a further period of 2 months for the offence under Section 3 read with Section 4 of the Prevention of Damage to Public Property Act (total fine Rs 4000). Substantive sentences were to run concurrently.

[10] Both the accused have challenged the said judgment in these appeals.

[11] Mr M.S. Ganesh, learned counsel for A-1 Senthilkumar, submitted that the prosecution case entirely rests on the confessional statement of A-1 Senthilkumar. The said statement is not voluntarily made and is retracted by him. It is, therefore, not safe to rest conviction on it. Besides, it is not corroborated. The counsel submitted that it is also not properly recorded. The counsel further submitted that reliance also cannot be placed on the evidence of PW15 Sevi Periyasamy and his wife PW14, Chandra because both of them have turned hostile. The prosecution has not examined any independent witness. The evidence on record shows that PW15 Sevi Periyasamy is, in fact, involved in this crime. There is no explanation as to why he has not been made an accused. The prosecution case has therefore, become suspect. The counsel submitted that no reliance can be placed on PW15 Sevi Periyasamy who is himself an accused. The counsel submitted that in the circumstances, the conviction of A-1 Senthilkumar deserves to be set aside.

[12] Mr Gowthaman, learned counsel for A-2 Periyasami, has submitted written submissions which we have perused. He submitted that the prosecution has not proved that A-2 Periyasami was a member of any banned organisation. Relying on *Pulin Das v. State of Assam*[1], the counsel submitted that conviction of A-2 Periyasami cannot be sustained. The counsel submitted that A-2 Periyasami was arrested one year after the incident because there was confusion about his name. Because of the similarity of name, he is implicated in this case though he is in no way concerned with the offence. The counsel submitted that no reliance can be placed on the evidence of PW15 Sevi Periyasamy, because he himself is an accused. He procured sulphur for the preparation of bomb. The counsel further submitted that statement of this witness is recorded under Section 164 CrPC after a prolonged police custody hence, no reliance can be placed on it. In any case, it is uncontroverted that A-2 Periyasami had asked PW15 Sevi Periyasamy to only provide food for the four persons who were likely to come for a function. Relying on *Prakash Kumar v. State of Gujarat*[2], the counsel submitted that considering the role assigned to A-2 Periyasami, his conviction must be set aside. There is absolutely no evidence on record to establish that A-2 Periyasami had any prior knowledge of the offence which was committed by the accused and, therefore, even if it is found that he had some contact with PW15 Sevi Periyasamy it cannot be said that he was a part of the conspiracy.

1 (2008) 5 SCC 89 : (2008) 2 SCC (Cri) 520
2 (2007) 4 SCC 266 : (2007) 2 SCC (Cri) 285

A In this connection, he relied on *Vijayan v. State of Kerala*[3]. The counsel submitted that no witness has made any specific allegation against A-2 Periyasami. PW15 Sevi Periyasamy turned hostile and A-1 Senthilkumar retracted his confessional statement. Therefore, there is no evidence on record to connect the accused with the crime. He deserves to be acquitted.
B The counsel submitted that A-2 Periyasami has undergone two years and nine months' sentence and this fact may also be taken into consideration.

[13] Mr Subramonium Prasad, Addl. Advocate General, for the State of Tamil Nadu on the other hand submitted that the validity of Section 15 of the TADA has been upheld by this Court. Therefore, conviction can be based
C on a confessional statement recorded under Section 15 of the TADA. If a confessional statement is found to be truthful then, despite its subsequent retraction or its denial in statement recorded under Section 313 CrPC, it can be relied upon. In this connection, the counsel relied on *State v. Nalini*[4] and *Yakub Abdul Razak Memon v. State of Maharashtra*[5]. The counsel submitted
D that in this case apart from the confessional statement of A-1 Senthilkumar, there is other evidence on record to establish complicity of the appellants. In support of this submission, the counsel took us through the evidence of PW13, M. Paramasivam, the then Chief Permanent Inspector of Peralam and the evidence of PW32, K. Ramakrishnan, the then Assistant Director of
E Forensic Department. Evidence of these witnesses show that the handwriting on the incriminating posters found at the scene of occurrence is that of A-1 Senthilkumar. The counsel also relied on the evidence of PW15 Sevi Periyasamy who has turned hostile at a very late stage. The counsel submitted that hostile witnesses' evidence need not be totally ignored. Part
F of the evidence which is consistent can be relied upon. The counsel submitted that sufficient corroboration is available to the confessional statement of A-1 Senthilkumar. The counsel urged that since the involvement of the appellants is proved beyond doubt, the appeals be dismissed.

[14] The prosecution's claim that on 24-10-1992 at or around 2.45am.
G there was a blast at the rails of Bridge No. 276 in between km 292/6 and 7 situated between Kallakudi Pazhanganatham and Kallagam Railway Stations, which damaged 20 wooden sleepers and rails to a length of 20 ft and a portion of concrete structures is not disputed. The engine driver of Quilon Express, which was to cross Bridge No. 276, stopped the train as he saw boulders on the track. Thus, a great disaster was averted. So far as the
H occurrence of the blast is concerned, the prosecution has examined PW1 to PW13, who are railway employees. It is not necessary to deal with their evidence because there is no serious challenge to that part of the prosecution story.

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3 (1999) 3 SCC 54 : 1999 SCC (Cri) 378
4 (1999) 5 SCC 253 : 1999 SCC (Cri) 691
5 (2013) 13 SCC 1 : (2013) 3 Scale 565

[15] At the outset, we must deal with the submission that the prosecution has not examined any independent witnesses. It is common knowledge that when the terrorists unleash a way of terror, no independent witnesses are ready to come forward and depose against them. The prosecution case cannot be rejected on this ground. In any case, the evidence on record is cogent and reliable and, therefore, non-examination of independent witnesses does not have any adverse impact on the prosecution case. We may also note that the evidence of defence witnesses does not inspire confidence and has rightly not been taken into consideration by the trial court. PW14 Chandra, wife of PW15 Sevi Periyasamy turned hostile. Some other formal witnesses also turned hostile. This, however, has not affected the core of prosecution case which is established by reliable evidence. We shall now deal with the evidence which, in our opinion, bears out the prosecution case.

[16] PW15 Sevi Periyasamy appears to have given the leads to the investigating agency to unearth the crime. His statement was recorded under Section 164 of the Code by the Judicial Magistrate, Perambalur on 31-12-1993. He stated that he is a member of Ambedkar Narpani Mandaram. They had celebrated Ambedkar birthday function in 1991. He met A-2 Periyasami in that function. On 23-10-1992, A-2 Periyasami came to his house and told him that one Lenin and 3 other persons will visit him, they will stay in the house till night and that he should provide food to them. Lenin came to his house at 1.30 p.m. Lenin introduced him to the other person who had come with him as Kumar. Thereafter, two other persons came there. They were introduced to him as Karalan and Rajaram. He asked them as to for what purpose they had come to his house. They told him that they had come to participate in the function and they will stay in his house till night. He put a cot in the cattle shed and asked them to sit. He and his wife prepared food for them. He saw both Lenin and Karalan removing the gelatin sticks. They applied flour like powder over the same. He suspected them. He asked them as to what they were doing with gelatin sticks. Karalan stated that he should not ask any questions about what they were doing. Then A-1 Senthilkumar and Rajaram alias Madhavan wrote slogans on white colour paper with black ink such as "Veera Vanakkam" (royal salute) and "Withdraw the cases filed against the Tamilian leaders". Karalan then asked him to get two empty glass bottles. He gave two bottles to them. They broke the glass bottles into powder. Thereafter, Karalan gave him Rs12 and asked him to purchase sulphur powder. Since they threatened him, out of fear, he went to Perambalur and purchased 100 gm sulphur powder. He came to his village and handed over the sulphur powder to Karalan. After taking food, they left keeping their goods in the cattle shed. After some time, all of them returned with tin bottles and inserted gelatin sticks in tin bottles. They left the house. When he asked them, where they were going, Lenin told him that he would come to know when he reads the newspaper on the next day. Next day, he read the newspaper and came to know that the railway bridge situated at Kallakam Muthuvathur Village had been destroyed due to a bomb blast. He

A asked A-2 Periyasami, who had caused the blast. A-2 Periyasami told him that Lenin, Karalan and Rajaram alias Madhavan were responsible for the blast and if he discloses this to anybody, his family would be killed. Thereafter, he met A-1 Senthilkumar at Thuraimangalam Junction Road. A-1 Senthilkumar told him that he, Karalan, Lenin and Rajaram had
B destroyed the railway bridge. He told A-1 Senthilkumar that he cannot give him shelter in his house. A-1 Senthilkumar went away telling him that if he discloses this to anybody, they will finish his family. Therefore, in the interest of his family, he did not disclose to anybody what he was told. Thereafter, police interrogated him and he disclosed the facts which were
C known to him. He also identified the photographs of Karalan, Rajaram and Lenin.

[17] PW15 was examined in the court on 13-9-1996 and on 3-11-1997 when he reiterated his statement given under Section 164 CrPC. He was recalled on 5-2-1998 when he stated that MO 5 series (wall posters) were
D written by A-1 Senthilkumar in his cattle shed. He was again recalled on 25-9-1998 when he acknowledged that on 31-12-1993 he had given statement before the Judicial Magistrate at Perambalur. He was again recalled on 19-9-2001. On that day, he resiled from his earlier statement to some extent. He stated that he did not remember whether A-2 Periyasami had personally
E informed him that four persons would come and he should feed them. He, however, stated that the four persons did come and they informed him that they hail from the similar organisation and he should provide food for them. He was again recalled on 28-9-2001. On that day, he stated that he saw Lenin when he came to his house and he came to know about Karalan when he visited his house. He then stated that he was detained at Q Branch Police
F Station and he was told by the investigating officer that he would be set at liberty after he gave his statement before the Judicial Magistrate. He, however, denied the suggestion that A-1 Senthilkumar did not meet him at his residence. He stated that the person, who accompanied Lenin, informed him that his name was A-1 Senthilkumar. He stated that it was incorrect to
G state that he was intimidated by the police from 10-12-1992 to 30-12-1992. He stated that he was tutored by the investigating officer to make the statement before the Judicial Magistrate. He stated that he used to render help to any Dalit guest and he would not have given food and shelter to Lenin, if he had knowledge that he belonged to that organisation. He then
H stated that he had not met A-1 Senthilkumar earlier and he was seeing him in the court for the first time. Thus, it is apparent that on 28-9-2001, though he stuck to several assertions which he had made earlier, he resiled from his statement to some extent. The Public Prosecutor, therefore, sought permission to cross-examine him. The Public Prosecutor cross-examined
I him. In the cross-examination, he stated that he gave this statement at the dictates of the investigating officer.

[18] PW40 PI Pattabiraman stated that after he took custody of A-1 Senthilkumar, he took his specimen signatures which are Ext. P-6 series. He further stated that on 19-12-1993, he took A-1 Senthilkumar to Chennai and produced him before PW37, Ramanujam, Superintendent of Police, Q Branch, CID, Chennai and gave a written requisition for recording confessional statement of A-1 Senthilkumar under Section 15 of the TADA. On 20-12-1993, at 1800 hours PW37 Ramanujam after ascertaining that A-1 Senthilkumar was not threatened or induced to give his confessional statement, recorded his confessional statement and obtained his signature on each page.

[19] In his confessional statement, A-1 Senthilkumar has stated how he came in contact with one Murugesan, who was running an association to spread the ideology of Ambedkar. It is through Murugesan that he got acquainted with the activities of Tamil Nadu Liberation Force and associates of Murugesan like Lenin and Ravi. He stated that in the house of Ravi, Murugesan, Lenin and others used to hold secret meetings; they used to say that Tamil Nadu should secede from India and for that purpose, they have to fight with weapons. He further stated that Lenin took him to the house of PW15 Sevi Periyasamy. Lenin told him that they had been sent by A-2 Periyasami. Within short time, Rajaram alias Madhavan and Karalan alias Nagarajan also came there. Karalan brought a bag containing 40 gelatin sticks, one long green-coloured wire, 5 to 6 detonators and jute thread. The bag brought by Rajaram alias Madhavan contained an empty tin of five litre capacity, two large drawing papers and two black and red colour sketch pens. They had brought wallpapers and as instructed by Lenin and Karalan A-1 Senthilkumar wrote slogans such as "Bravery salute, Bravery salute", "Let the liberation struggle of Kashmiri people win", "Withdraw the cases filed against Tamil leaders", etc. He further stated that in between, Lenin and Karalan took out gelatin sticks wrapped in a paper and mixed in a dough. They got two empty glass bottles from PW15 Sevi Periyasamy, broke them into pieces and mixed that also in the dough. He stated that Karalan got sulphur powder through PW15 Sevi Periyasamy and applied sulphur to the wire. In the evening, they went near the lake area and Lenin told them that they are going to demolish the railway track so that panic would be created among the public. Then they went ahead, had dinner in a hotel. They came to PW15 Sevi Periyasamy's house and took all articles which were kept there and left that place. While leaving the place, Lenin told everyone that they should read tomorrow's newspaper. From there, they went to Ariyalur by bus. From there, they went by bus to Dalmiapuram. They walked through a canal and reached a railway bridge. Sitting below the bridge, Karalan put the gelatin and sulphur in the tin. He tied the detonator together and inserted the same in the tin which had gelatin mixture. He connected the wire with the detonator and, through the hole in the tin cover, he took out the wire and closed the tin. Thereafter, all the four climbed over the bridge. Karalan kept the bomb in the southern corner of the bridge in the middle of the rails. They

A put a huge stone between the rails. They kept the branches of trees over the rails. They wrote slogans on the pillars. They also kept posters prepared on drawing papers and notices at the scene of offence. Karalan lit a wire with a match stick and they ran away. Within a few seconds, there was a blast. He, thereafter, narrated how he went from place to place till he was arrested
B on 17-12-1993.

[20] The confessional statement of A-1 Senthilkumar reveals that he had accompanied other accused to the house of PW15 Sevi Periyasamy, that he had actively participated in the activities of Karalan, Lenin and Rajaram alias Madhavan and they had joined him in manufacturing explosive substances.
C His confession further reveals that he wrote slogans on papers and he was party to preparing, carrying and planting of bomb and causing of the blast. It must also be stated here that A-1 Senthilkumar retracted his confessional statement. We shall advert to that a little later.

D **[21]** Having referred to the relevant evidence, we shall now consider whether the prosecution has established its case against A-1 Senthilkumar. His confessional statement is a major piece of evidence against him. The question is what is the evidentiary value of a confession recorded under Section 15 of the TADA.

E **[22]** In *Yakub Abdul Razak Memon*[5], after referring to several judgments of this Court on the evidentiary value of confession particularly judgment of this Court in *Nalini*[4], this Court summed up the position of law on the evidentiary value of confession. The relevant conclusions could be quoted:

(*Yakub Abdul Razak Memon* case[5], SCC p. 197, para 180)

F > 180. To sum up, it can easily be inferred that the position of law on the evidentiary value of confession is as under*:
>
> 180.1. If the confessional statement is properly recorded satisfying the mandatory provision of Section 15 TADA and the Rules made thereunder, and if the same is found by the court as having been made
G voluntarily and truthfully then the said confession is sufficient to base conviction on the maker of the confession.
>
> 180.2. Whether such confession requires corroboration or not, is a matter for the court to consider on the basis of the facts of each case.
>
> 180.3. With regard to the use of such confession as against a co-accused,
H it has to be held that as a matter of caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base conviction on the basis of such confession

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I 5 *Yakub Abdul Razak Memon v. State of Maharashtra*, (2013) 13 SCC 1

4 *State v. Nalini*, (1999) 5 SCC 253 : 1999 SCC (Cri) 691

* Ed.: See also *Jameel Ahmed v. State of Rajasthan*, (2003) 9 SCC 673, p. 689, para 35 : 2003 SCC (Cri) 1853.

of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.

180.4. The nature of corroboration required both in regard to the use of confession against the maker as also in regard to the use of the same against a co-accused is of a general nature, unless the court comes to the conclusion that such corroboration should be on material facts also because of the facts of a particular case. The degree of corroboration so required is that which is necessary for a prudent man to believe in the existence of facts mentioned in the confessional statement.

(emphasis in original)

It is clear, therefore, that a confessional statement recorded under Section 15 of the TADA, if found to be voluntarily made and is truthful and properly recorded, can form the basis of conviction.

[23] We have already stated that PW 40 PI Pattabiraman produced A-1 Senthilkumar before PW 37 Ramanujam, Superintendent of Police, "Q" Branch, CID, Chennai for recording his confessional statement. On 22-12-1993, PW37 Ramanujam recorded confessional statement of A-1 Senthilkumar after ascertaining that he was not threatened or induced to give his confessional statement. PW 37 Ramanujam obtained A-1 Senthilkumar's signatures on each page of the confessional statement. A-1 Senthilkumar signed on the said confessional statement acknowledging that he was giving the statement voluntarily without any coercion and compulsion and knowing its consequence. We have carefully read the evidence of PW40 Pattabiraman and PW37 Ramanujam and the confessional statement of A-1 Senthilkumar, which is at Ext. P-24. We are satisfied that the confessional statement was properly recorded; that A-1 Senthilkumar was not forced or coerced into giving statement; that the statement is given voluntarily and that it is truthful. In our opinion, therefore, it can form the basis of conviction.

[24] We must now come to the retraction. It is argued however that A-1 Senthilkumar has retracted his confession and, hence, it has no evidentiary value. It cannot be relied upon. It is not possible to accept this submission. Retraction does not always dilute or reduce or wipe out the evidentiary value of a confessional statement. Quite often retraction is an afterthought. It could be the result of legal advice or pressure exerted by those whose involvement may be likely to be disclosed or confirmed by the confessional statement of the accused. Therefore, in each case, the court will have to examine whether the confession was voluntary and true and whether the retraction was an afterthought. In *Kalawati v. State of H.P.*[6], this Court stated that the amount of credibility to be attached to a retracted confession would depend upon the

6 AIR 1953 SC 131 : 1953 Cri LJ 668

A facts and circumstances of each case. Again in *State of T.N. v. Kutty*[7], this Court stated that a retracted confession may form legal basis for conviction if the court is satisfied that the confession was true and was voluntarily made. Following these judgments in *Yakub Abdul Razak Memon*[5], this Court held that where the original confession was truthful and voluntary, the court can rely
B upon such confession to convict the accused in spite of a subsequent retraction and its denial in statement under Section 313 CrPC. The law is thus crystallised. A retracted confessional statement is therefore not always worthless. We have no hesitation in reiterating that A-1 Senthilkumar's confessional statement was recorded after following the correct procedure;
C that it was voluntary and truthful; that A-1 Senthilkumar was not forced or compelled to give his statement and that the retraction of the said statement is clearly an afterthought and should be ignored.

[25] In any case, there is sufficient corroboration available to the confessional statement of A-1 Senthilkumar from the other evidence on
D record. In this connection, it is necessary to turn to the evidence of PW13 M. Paramasivam, who was working as Chief Permanent Inspector at Peralam at the relevant time. He stated that on 24-10-1992, in the early morning at 3.00 a.m. when he got the news that a train had halted, he went to the place of occurrence. He found that the train was reversed and kept at Kallagam
E Railway Station. He went to the southern part of the bridge and found that the fish plates and the concrete portion of the bridge were broken. He got down from the bridge. He saw wall posters (MO 5 series), bit notices and other articles. They were taken charge of under mahazar (Ext. P-3). PW 32 K. Ramakrishnan, who was working as the Assistant Director in the Photography Division of the Forensic Science Department, Chennai, at the
F relevant time, stated that he had received the requisition of Inspector of Police, Q Branch, CID, Trichy. He further stated that along with the requisition, he had received two disputed wall posters marked as MO 5 series and four disputed wall posters marked MO 22 series. For comparison of the disputed handwriting on the wall posters, he had received 30 wall posters and
G four full sheets containing specimen handwriting, which were marked Ext. P-6 series. He compared the specimen handwriting with the handwriting appearing on the wallpapers (MO 5 series and MO 22 series) and found that the writings on MO 5 series and MO 22 series were of the person who wrote writings marked Ext. P-6 series. Ext. P-6 series are the specimen
H handwritings of A-1 Senthilkumar taken by PW40 PI Pattabiraman. Thus, evidence of PW13 M. Paramasivam and PW32 K. Ramakrishnan provides necessary independent corroboration to the confessional statement of A-1 Senthilkumar. The fact that the incriminating wall posters found at the scene of offence bear handwriting of A-1 Senthilkumar is a clinching circumstance
I and goes a long way in establishing his guilt.

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7 (2001) 6 SCC 550 : 2001 SCC (Cri) 1177 : AIR 2001 SC 2778

5 Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 SCC 1

[26] So far as evidence of PW15 Sevi Periyasamy is concerned it is argued that he was himself involved in the offence. His evidence is tainted evidence and, hence, it should not be relied upon. It is not possible to accept this submission. The evidence of this witness clearly indicates that he did not know anything about the activities of the accused. He is an active worker of Ambedkar Welfare Association. He stated that he is a Dalit and he works for the cause of Dalits. According to him, it is A-2 Periyasami, who told him that four persons would be coming to him and he should provide food to them. He accordingly gave them lunch. When they were busy preparing wall posters and manufacturing bombs, he asked them what they were doing and they told him that he should not ask them any question and he would come to know about it if he reads next day's newspaper. According to him, when A-1 Senthilkumar met him, he asked him who had caused the blast. A-1 Senthilkumar told him that blast was caused by him and his associates and if he informs anyone about it, all members of his family will be killed. It is difficult therefore to come to a conclusion that PW 15 Sevi Periyasamy was involved in the offence. He appears to be a victim of circumstances. He was used by the accused. He did not know the nature of conspiracy hatched by the accused. His evidence, therefore, cannot be discarded as tainted evidence.

[27] It was submitted that the evidence of PW15 Sevi Periyasamy must be rejected because he turned hostile. It is trite that the evidence of a hostile witness need not be completely discarded. The prosecution can use that part of his evidence which is corroborated by other evidence on record (see *Bhajju v. State of M.P.*[8]) Moreover, in this case, the facts are peculiar. From 13-9-1996 when PW15 Sevi Periyasamy was first examined in the court till 25-9-1998, he supported the prosecution. When after five years he was recalled on 19-9-2001, he resiled from his previous statement only to some extent. On 28-9-2001, he confirmed some portion of his earlier statement but resiled to a large extent from his earlier statement. It is obvious that the recording of his evidence was not continuous. There was huge gap of five years between recording of his examination and re-examination. It is also pertinent to note that on 13-9-1996, 3-11-1997, 5-2-1998 and 25-9-1998, when he narrated the sequence of events and explained the role of the accused, he was not cross-examined at all. It is clear from this that recording of his evidence was unduly prolonged, and in that period, an effort was made to win him over. These facts will have to be taken into consideration while considering the evidentiary value of his evidence. We are of the opinion that it would be safe to rely on that part of the evidence of this witness, which is corroborated by other evidence on record.

[28] We have extensively referred to the evidence of PW15 Sevi Periyasamy. He stated how A-1 Senthilkumar came to his house along with Lenin and how two other persons joined him. He further stated how they

8 (2012) 4 SCC 327 : (2012) 2 SCC (Cri) 440

A prepared the dough with gelatin sticks and broken glass pieces. He has further gone on to say that they left the house telling him that he should not ask them anything about their activities and he should read the next day's newspaper to know what they were doing. He has further stated that after the blast, he met A-1 Senthilkumar at Perambalur-Thuraimangalam Junction Road and he
B told him that he, Karalan, Lenin and Rajaram had destroyed the railway bridge. A-1 Senthilkumar left the place telling him that if he discloses it to anyone, all members of his family will be killed. This portion of his evidence finds sufficient corroboration from other evidence on record and, therefore, we are of the opinion that reliance can be placed on it. Thus, A-1
C Senthilkumar's involvement in the crime is proved to the hilt by his confessional statement recorded by PW37 Ramanujam; by the evidence of PW13 Paramsivam who stated that posters were seized from the place where blast occurred; by the evidence of PW32 Ramakrishnan which indicates that those posters were in his handwriting and the statement of PW15 Sevi
D Periyasamy which indicates his role. The trial court, therefore, has rightly convicted him.

[29] So far as A-2 Periyasami is concerned, in his confessional statement A-1 Senthilkumar has only stated that Lenin took him to the house of PW15 Sevi Periyasamy and others joined him there in that house. When he reached
E there, Lenin informed PW15 Sevi Periyasamy that they have been sent by A-2 Periyasami. Apart from this, there is no reference to A-2 Periyasami in the confessional statement of A-1 Senthilkumar. PW15 Sevi Periyasamy has stated that on 22-12-1993 A-2 Periyasami came to him and stated that Lenin and others will visit him and they will stay till night and food should be
F provided to them. It appears from the confessional statement of A-1 Senthilkumar and evidence of PW15 Sevi Periyasamy that A-2 Periyasami did not participate in manufacturing of bombs, carrying them to the scene of offence, planting them under the railway bridge and causing the blast. There is a passing reference in PW15 Sevi Periyasamy's evidence that after the blast when he asked A-2 Periyasami about the blast, he told him that Lenin,
G Karalan and Rajaram were responsible for the blast and if he discloses this to anyone, all members of his family would be killed. This part of the statement of PW15 Sevi Periyasamy is not corroborated by any evidence on record. Thus, it would not be safe to rely on it. We are, therefore, of the opinion that the prosecution has not been able to establish its case against
H A-2 Periyasami beyond reasonable doubt. He must, therefore, get the benefit of doubt. In the circumstances, the impugned judgment and order so far as it convicts and sentences A-1 Senthilkumar is confirmed. The conviction and sentence of A-1 Senthilkumar is confirmed. The impugned judgment and order so far as it convicts and sentences A-2 Periyasami is set aside. He is
I acquitted. A-2 Periyasami is on bail. His bail bond stands discharged.

[30] In the result, Criminal Appeal No. 1272 of 2012 is allowed and Criminal Appeal No. 787 of 2013 is dismissed.